O/C.C.Y./51

1951

File No. 34/51

LEGAL DEPT.

G. **BRANCH**

[redacted] the Cotton

Cloth & Yarn (Control) Order, 1945

C/3/51

O/C.C.Y./51

File No. 34/51

Gen. 194 a.

C O N T E N T S.

Legal Department File No. G. C.C.Y./51

Sr. No.	N.I./O.No.	Subject	Pages.
		Opinions under the cotton cloth and yarn(control)order, 1945.	
1)	O.No.G-4/3-1-51	Re: Prosecution for the contravention of the provisions of the order.	1-4
2)	O.No. G-177/9-5-51.	Re: Question of withdrawing pending prosecution in view of High Court decision in a certain case (Copies not taken).	5-8

SMR 24-7-56
5 Copies.

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MKL 16/8.

Office of the R.L.A.

The question for consideration is whether the firm of M/s. C. & P.T. Chavan, yarn quota holders of Gadag, should be prosecuted on the following charges:-

(1) Under Textile Commission's Notification No. T.C. (17)1/45, dated 30th January 1945 for selling yarn at higher price than the prescribed price by unauthorisedly adding railway freight, insurance charges, Mills handling charges, forwarding charges, Bank's commission, Hundekari, Hamali, cartage etc. to the amount of exmill price plus quota holder's margin.

(2) The firm had in its possession time-barred bales of yarn in contravention of clause 14(2) of the Cotton Cloth and Yarn (Control) Order, 1945.

(3) The firm had not issued proper receipts in respect of two sales as required by clause 17 of the Bombay Cotton Yarn Trade Regulation Order, 1946.

As regards the first charge under Textile Commissioner's Notification No. T.C. (17)1/45, dated 30th January 1945 the legal implication of this notification is fully explained in R.L.A's opinion No. G-613, dated 12th October 1949. The only moot point is whether the firm has charged excess freight from the district allotees. The firm's books of accounts have been thoughly examined by the police twice and both the police reports dated 2nd December 1949 and 9th March 1950 show that in majority of cases the firm has charged an amount less than that actually incurred by it and in no case exceeding 10 as. per 10 lbs. However under the said notification the firm can charge freight from the purchasers, i.e., the actual expenses incurred by the firm in delivering the bales from the firm's and to the purchaser's end. But the firm cannot charge the Mills handling and forwarding charges paid by the firm to the Mills for delivery of the bales from the Mills to the firm's end. It appears

that the firm has also charged to the purchaser the actual mills' handling charges which are not permissible under the notification. However, the firm has repeatedly expressed its readiness to refund what ever charges are treated by Government as excess. In view of the firms' proposal to refund the excess charges and the fact that the firm's dealers' license has stood suspended for about 3 years it is for the Department concerned to consider whether the offence may not be treated as technical.

As regards the second charge under clause 14(2) of the Cotton Cloth and Yarn (Control) Order, 1945 it is alleged that out of 179 bales the firm had in its possession on 1-3-1947 three time-barred bales of pre-February or February 1946 manufacture. It appears from the District Magistrate's report dated 29-8-50 that the bales in question have already been disposed of as per Provincial Textile Controller's orders and there is no panchanama. In regard to these three time-barred bales the firm has explained in para 4 of its letter addressed to the Honourable Minister, Civil Supplies Department at pages 277-279 ante, that those bales remained with the firm and became time-barred due to the fact that some of the purchasers were not lifting the bales in time and the unlifted bales were included in the successive lift and, consequently, one of the godown clerks had inadvertently delivered the new bales in lieu of the older ones. Apart from this in the absence of the mudda mal bales there is no other sufficient evidence to establish the charge against the firm. In the circumstances prosecution on this count is not likely to be successful.

As regard the charge No. (3), under clause 17 of the Bombay Cotton Yarn Trade Regulation Order, 1945 for failure to issue cash-memos, the firm has explained that pacca receipts were not given by the

clerks through oversight only in two instances in which the sales were effected against advance bills issued to the purchasers. In support of this plea the firm has also produced the copies of the receipts of the bales by the respective parties. In view of this the failure to issue cash-memos through oversight is but a technical offence. Considering that the firm's licence has been suspended for about three years, it would not be worthwhile launching the prosecution on this count also.

Sd/-

Remembrancer of Legal Affairs.

U.R. to the Provincial Textile Controller No. G-4 dated the 3rd January 1951.

EVY. 26.7.